



**CITY OF MARLBOROUGH  
OFFICE OF CITY CLERK  
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FEBRUARY 9, 2009**

Regular meeting of the City Council held on Monday February 9, 2009 at 8:06 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Schafer, Juair, Seymour, Clancy and Landers. Meeting adjourned at 8:40 p.m.

ORDERED: Minutes, City Council Meeting, January 26, 2009, **FILE**; adopted.

ORDERED: That the Minutes of the Joint Convention January 26, 2009, **FILE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, MARCH 9, 2009** as date for a **PUBLIC HEARING** on Application for a Special Permit from MetroPCS Massachusetts LLC to install a telecommunications facility onto an existing water tank located at 115 Onamog St., **REFER TO WIRELESS COMMUNICATION COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the budget transfer request in the amount of \$109,000.00 which moves \$95,000.00 from Police Officers to OT Regular, \$9,500.00 from Police Officers to Public Safety Dispatchers and \$4,500.00 from Police Officers to Holiday Pay accounts for anticipated Police overtime deficits for the remainder of the fiscal year, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 12100001-50420	\$95,000.00
Police Officers	
Acct. # 12100001-50420	\$9,500.00
Police Officers	
Acct. # 12100001-50420	\$4,500.00
Police Officers	

TO:

Acct. # 12100003-51310	\$95,000.00
Overtime-Regular	
Acct. # 12100003-51213	\$9,500.00
Public Safety Dispatchers	
Acct. # 12100003-51490	\$4,500.00
Holiday Pay	

ORDERED: That the budget transfer request in the amount of \$41,427.05 which moves the funds from Fringes to the following accounts: Assessor Sick Leave Buy Back (\$833.95), Fire Sick Leave Buy Back (\$20,609.75) and DPW Forestry Sick Leave Buy Back (\$19,983.35), **APPROVED**; adopted.

## FROM:

Acct. # 11990006-51500	\$41,427.05
Fringes	

## TO:

Acct. # 11410003-51920	\$833.95
Assessor Sick Leave Buy Back	
Acct. # 12200003-51920	\$20,609.75
Fire Sick Leave Buy Back	
Acct. # 14001503-51920	\$19,983.35
DPW Forestry Sick Leave Buy Back	

**Councilor Juaire abstained**

ORDERED: That the budget transfer request in the amount of \$12,000.00 which moves funds from Custodian to Gross Overtime as a result of snow removal and work performed while an employee is out on worker's compensation, refer to **FINANCE COMMITTEE**; adopted.

## FROM:

Acct. # 11920003-50560	\$12,000.00
Custodian	

## TO:

Acct. # 11920003-51300	\$12,000.00
Gross Overtime	

ORDERED: That the budget transfer request in the amount of \$20,000.00 which moves funds from Firefighter to Additional Gross Overtime to cover an anticipated deficit based on figures for the last 22 pay periods of FY08, refer to **FINANCE COMMITTEE**; adopted.

## FROM:

Acct. # 12200001-50450	\$20,000.00
Firefighter	

## TO:

Acct. # 12200003-51300	\$20,000.00
Additional Gross Overtime	

ORDERED: That the budget transfer request in the amount of \$93,500.00 which moves funds from and to various DPW accounts which represent actual and anticipated overtime deficits for the remainder of FY09, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH  
BUDGET TRANSFERS --

DEPT: Public Works

FISCAL YEAR: FY 09

FROM ACCOUNT:

TO ACCOUNT:

Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
<u>\$49,516.00</u>	<u>\$28,000</u>	<u>91090001</u>	<u>50460</u>	<u>Meter Reader</u>	<u>\$28,000.00</u>	<u>61090003</u>	<u>51310</u>	<u>Overtime</u>	<u>\$20,233.66</u>
	Reason:	<u>Funds available from W. C. injury.</u>				<u>Anticipate need to cover normal overtime needs to cover underfunding.</u>			
<u>\$253,113.27</u>	<u>\$15,000</u>	<u>61090001</u>	<u>50740</u>	<u>Equip. Operator</u>	<u>\$15,000</u>	<u>61090003</u>	<u>51310</u>	<u>Overtime</u>	<u>\$20,233.66</u>
	Reason:	<u>Funds available from W. C. injury.</u>				<u>Anticipate need to cover normal overtime needs to cover underfunding.</u>			
<u>\$49,516.00</u>	<u>\$5,500</u>	<u>91090001</u>	<u>50460</u>	<u>Meter Reader</u>	<u>\$5,500</u>	<u>60081003</u>	<u>51310</u>	<u>Overtime</u>	<u>\$4,958.82</u>
	Reason:	<u>Funds available from W. C. injury.</u>				<u>Power outages and storms have placed heavy demand on account.</u>			
<u>\$9,851.13</u>	<u>\$2,500</u>	<u>60085006</u>	<u>54340</u>	<u>Maintenance Machinery</u>	<u>\$2,500.00</u>	<u>60085003</u>	<u>51310</u>	<u>Overtime</u>	<u>\$6,585.65</u>
	Reason:	<u>Anticipate adequate funds for rest of year.</u>				<u>Power outages and storms have placed heavy demand on account.</u>			

CITY OF MARLBOROUGH  
BUDGET TRANSFERS --

DEPT: Public Works

FISCAL YEAR: FY 09

FROM ACCOUNT:

TO ACCOUNT:

Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$304,522.00	\$3,000	14001503	50740	Equipment Operators	\$3,000.00	14001303	51310	OT-Reg	\$4,618.42
				Reason: <u>Money available due to vacant postions</u>				Reason: <u>Projected need to cover overtime for remainder Fy 09.</u>	
\$304,522.00	\$22,800	14001503	50740	Equipment Operators	\$22,800	14001303	51470	Interim Foreman	(\$4,803.11)
				Reason: <u>Money available due to vacant postions</u>				Reason: <u>Estimation based on one foreman promoted as acting division supervisor until 5-Feb-09 and Foreman on medical leave for hip replacement.</u>	
\$304,522.00	\$700	14001503	50740	Equipment Operators	\$700	14001403	51470	Interim Foreman	\$574.60
				Reason: <u>Money available due to vacant postions</u>				Reason: <u>Anticipated time off by foreman (contractual)</u>	
\$304,522.00	\$9,000	14001503	50740	Equipment Operators	\$9,000	1400503	51310	OT-Reg	\$4,081.51
				Reason: <u>Money available due to vacant postions</u>				Reason: <u>Projected need to cover overtime for remainder Fy 09.</u>	
\$304,522.00	\$7,000	14001503	50740	Equipment Operators	\$7,000	14001503	51470	Interim Foreman	\$6,202.59
				Reason: <u>Money available due to vacant postions</u>				Reason: <u>Estimation based on Cemeteries Division Foreman and Parks Foreman undergoing surgery (3 weeks &amp; 8 weeks recovery time respectively) (contractual)</u>	

**Suspension of Rules requested – granted to allow the City Solicitor to speak. He clarified that to his recollection; the statute provides sixty days for the temporary appointment.**

ORDERED: That the appointment of Karen Kisty for the position of Personnel Director for a term of three years expiring from the date of confirmation, refer **BACK TO THE MAYOR TO READVERTISE AND REQUEST THE MAYOR TO SUBMIT AN ORDER, IF FEASIBLE AND IN COMPLIANCE WITH THE CITY SOLICITOR'S OPINION, WHICH WOULD REQUEST A 30 DAY TEMPORARY APPOINTMENT OF A PERSONNEL DIRECTOR AFTER EXPIRATION OF THE SIXTY DAYS**; adopted.

ORDERED: That the reappointment of Mark Leonard as Police Chief for a four year term expiring on March 1, 2013, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the appointment of Cynthia Panagore Griffin and Krista Holmi to the Design Selection Board for terms expiring March 4, 2011 and March 4, 2010 respectively, **FILE**; adopted.

ORDERED: That the reappointment of Tom Evangelous to the Parks and Recreation Committee for a term expiring on March 5, 2014, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: Be it ordained by the City Council of the City of Marlborough that the previously unnamed recreation area at the Hildreth School shall be named after Jeduthan Alexander, a resident of Marlborough who was killed in action during the War of Independence at the Battle of Bunker Hill on June 17, 1775, that it shall henceforth be known as the Jeduthan Alexander Recreation Complex, refer to **VERTERAN'S AFFAIRS COMMITTEE**; adopted.

ORDERED: That the five options to amend the district agreement regarding the nomination and election of the regional district school committee candidates in a biennial state election, refer to the **MAYOR AND LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the re-codified Code of the City Marlborough, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY ADDING THERETO A NEW CHAPTER 66, ENTITLED "REGISTRATION AND MAINTENANCE OF ABANDONED AND/OR FORECLOSING RESIDENTIAL PROPERTIES," AS FOLLOWS:

#### **CHAPTER 66**

#### **REGISTRATION AND MAINTENANCE OF ABANDONED AND/OR FORECLOSING RESIDENTIAL PROPERTIES**

##### **Sec. 66-1. Purpose; Enforcement Authority.**

A. It is the purpose and intent of this Chapter to protect and preserve public safety and security, and the quiet enjoyment of occupants, abutters and neighborhoods, by: (i) requiring all residential property owners, including lenders, trustees and service companies, to register abandoned and/or foreclosing residential properties with the City of Marlborough; and (ii) regulating the maintenance and security of abandoned and/or foreclosing residential properties to help prevent blighted and unsecure residences.

B. The Building Commissioner of the City of Marlborough has enforcement authority as to this Chapter, pursuant to MGL c. 143, § 3, the State Building Code, and the City's Zoning Ordinance.

##### **Sec. 66-2. Definitions.**

When used in this Chapter 66, the following terms shall have the following meanings, unless a contrary intention clearly appears:

"Abandoned" means vacant.

"City" means the City of Marlborough.

"Commissioner" means the Building Commissioner of the City of Marlborough or his/her designee.

"Days" means consecutive calendar days, including legal holidays as specified in MGL c. 4, § 7 and weekend days.

"Evidence of abandonment" means any condition that, by itself or in combination with other conditions, might lead a reasonable person to conclude that a property is vacant. Such conditions include but are not limited to overgrown and/or dead vegetation; accumulation of newspapers, circulars, flyers and/or mail; past due utility notices and/or disconnected utilities; accumulation of trash, junk and/or debris; the absence of window coverings such as curtains, blinds and/or shutters; the absence of furnishings and/or personal items consistent with residential habitation; statements by neighbors, passersby, delivery agents and/or governmental employees that the property is vacant; and such evidence as would constitute a violation of the City of Marlborough's so-called Anti-Blight Ordinance, codified at Chapter 64 of the City Code.

“Foreclosing” means the process by which a property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower of that loan defaults.

“Initiation of the foreclosure process” means the taking of any of the following actions: (i) taking possession of a residential property pursuant to MGL c. 244, § 1; (ii) publishing the first foreclosure notice of a residential property pursuant to MGL c. 244, § 14; (iii) delivering the mortgagee’s notice of intention to foreclose pursuant to MGL c. 244, § 17B; or (iv) commencing a foreclosure action on a residential property in either the Land Court or the Superior Court.

“Local” means within twenty (20) driving miles of the property in question.

“Mortgagee” means the creditor, including but not limited to service companies, lenders in a mortgage agreement, or any successor in interest of the mortgagee’s rights, interests or obligations under the mortgage agreement.

“Mortgagee in possession” means a mortgagee that, upon default of the borrower, has taken over control and/or occupancy of a property in order to collect income from the property and/or to prepare the property for foreclosure.

“Owner” means every person, entity, service company, property manager or real estate broker, who alone or severally with others:

- (i) has legal or equitable title to any dwelling, dwelling unit, manufactured home (mobile home unit), building or parcel of land, vacant or otherwise, including a manufactured housing community (mobile home park); or
- (ii) has care, charge or control of any dwelling, dwelling unit, manufactured home (mobile home unit), building or parcel of land, vacant or otherwise, including a manufactured housing community (mobile home park), in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or
- (iii) is a mortgagee in possession of any such any dwelling, dwelling unit, mobile home unit, building or parcel of land, vacant or otherwise, including a mobile home park; or
- (iv) is an officer or trustee of the association of unit owners of a condominium;
- (v) is a trustee who holds, owns or controls mortgage loans for mortgage-backed securities and has initiated the foreclosure process; or
- (vi) is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or
- (vii) is a person who operates a rooming house.

“Property” means any real, residential property, or portion thereof, located in the City of Marlborough, including but not limited to buildings and structures situated on the property.

“Residential Property” means any property that contains one or more dwelling units used, intended, or designed to be occupied for living purposes.

“Vacant” means any residential building or structure not currently legally occupied.

### **Sec. 66-3. Registration.**

A. All owners of abandoned and/or foreclosing residential properties shall register such properties with the Commissioner on forms provided by the Commissioner.

1. Each registration must state the individual owner’s or agent’s name, phone number and mailing address located within the Commonwealth of Massachusetts as required by MGL c. 59, § 57D, MGL c. 156D, § 5.02, and 950 CMR 113.20; the mailing address may not be a post office box.
2. Each registration must also certify that the property has been inspected by the owner and must identify whether the property is abandoned. If the property shows evidence of abandonment, the property is abandoned for purposes of this Chapter 66.

Each registration must designate a local individual or local property management company responsible for the maintenance and the security of the property. This designation must state the individual or company's name, direct phone number, and local mailing address; the mailing address may not be a post office box.

- a. If the owner's inspection determines that the property is abandoned, the registration must be received by the Commissioner within seven (7) days of the owner's inspection.
- b. If the owner's inspection determines that the property is not abandoned, but foreclosure proceedings have been initiated, the registration must be received by the Commissioner within seven (7) days of the initiation of the foreclosure process.
- c. If the Commissioner's inspection pursuant to Section 66-5 determines that the property is abandoned, the registration must be received by the Commissioner within fourteen (14) days of the Commissioner's first citation for improper maintenance.
- d. If, regardless of any determination as to abandonment, foreclosure proceedings have been initiated, the registration must be received by the Commissioner within seven (7) days of the initiation of the foreclosure process.

B. All property registrations pursuant to this Section 66-3 are valid for one (1) calendar year from the date when the registration is received by the Commissioner. An annual registration fee of one hundred dollars (\$100.00) must accompany the registration form. Subsequent registrations and fees are due within thirty (30) days after the date of expiration of the previous registration. Subsequent registrations must certify whether the property remains abandoned and/or remains in foreclosure, as the case may be.

C. Any owner that has registered a property under this Section 66-3 must report any change in information contained in the registration within ten (10) days of the change.

D. Once the property is no longer abandoned or is sold, the owner shall provide the Commissioner with written notice of legal occupancy or proof of sale, as the case may be.

**Sec. 66-4. Maintenance and Security Requirements.**

A. Properties subject to this Chapter must be maintained in accordance with the State Sanitary Code, the State Building Code, and local regulations concerning external and/or visible maintenance including but not limited to the City of Marlborough's so-called Anti-Blight Ordinance, codified at Chapter 64 of the City Code. The local owner or local property management company must inspect and maintain the property on a monthly basis for so long as the property is abandoned or shows evidence of abandonment. The name and the 24-hour contact phone number of the local owner or local property management company responsible for the maintenance must be posted on the front of the property so as to be clearly visible by the Commissioner or his/her designee from the street.

B. In accordance with state law, including but not limited to MGL c. 143, §§ 6-10 and 780 CMR 121.0, abandoned property must be made safe and must be secured so as not to be accessible to unauthorized persons.

C. Compliance with this Section 66-4 does not relieve the owner of any applicable obligations set forth in code regulations, covenant conditions and restrictions, and/or homeowners' association rules and regulations.

**Sec. 66-5. Inspections.**

Pursuant to the State Building Code, the Commissioner or his/her designee shall have the authority and the duty to inspect properties subject to this Chapter for compliance with this Chapter and to issue citations for any violations. The Commissioner or his/her designee shall have the discretion to determine when and how such inspections are to be made, provided that such determination is reasonably calculated to ensure that this Chapter is enforced.

**Sec. 66-6. Violations and Penalties.**

A. A failure to initially register with the Commissioner pursuant to Section 66-3 shall be enforced by non-criminal disposition pursuant to MGL c. 40, § 21D, resulting in a fine of \$300.00.

B. A failure to properly designate the name of the local individual or local property management company responsible for the maintenance and the security of the property pursuant to Section 66-3 shall be enforced by non-criminal disposition pursuant to MGL c. 40, § 21D, resulting in a fine of \$300.00 for each violation, and a like fine for each day's continuation of such violation.

C. A failure to maintain and/or to secure the property pursuant to Section 66-4 shall be enforced by non-criminal disposition pursuant to MGL c. 40, § 21D, resulting in a fine of \$300.00 for each week during which the property is not maintained and/or not secured in compliance with Section 66-4.

D. The penalties provided in this Section 66-6 shall not be construed to restrict the City from pursuing other legal remedies available to the City.

**Sec. 66-7. Appeals.**

Any person aggrieved by the requirements of this Chapter or by a decision issued hereunder may seek relief in any court of competent jurisdiction as provided by the laws of the Commonwealth.

**Sec. 66-8. Applicability.**

If any provision of this Chapter imposes greater restrictions or obligations than those imposed by any general law, special law, regulation, rule, ordinance, order or policy, then the provisions of this Chapter shall control.

**Sec. 66-9. Regulatory Authority.**

The Commissioner shall have the authority to promulgate rules and regulations necessary to implement and enforce this Chapter.

**Sec. 66-10. Severability.**

If any provision of this Chapter is held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from this Chapter's remaining provisions, which shall remain in full force and effect.

**Sec. 66-11. Notice.**

A copy of this ordinance is to be advertised in one (1) newspaper of general circulation in the City of Marlborough, and is to be mailed to all loan institutions, banks, real estate offices, and management companies located in, and/or having legal or equitable interest in any residential property located in, the City of Marlborough.



**Sec. 66-12. Effective Date.**

The provisions of this Chapter shall take effect immediately upon passage and all provisions shall be enforced immediately, except that no monetary fine shall be imposed pursuant to this Chapter until thirty (30) days after the date when notices are mailed pursuant to Section 66-11, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the City of Marlborough's Yearly Operational Plan for the year 2009 for control of roadside vegetation within the City's rights-of-way, **FILE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, MARCH 9, 2009** as date for a **PUBLIC HEARING** on the petition by Petition from National Grid to install one new pole on Florence St. #14-50, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the minutes, Community Development Authority, December 22, 2008, **FILE**; adopted.

ORDERED: That the minutes, MetroWest Regional Transit Authority, December 8, 2008, **FILE**; adopted.

ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.

- A. Joseph Pakus, 17 Red Spring Rd., vehicle damage
- B. Anthony Kalustian, 400 Simpson Rd., vehicle damage
- C. Donna Barthe, 99 Summer Hill Rd., Madison, CT., vehicle damage

Reports of Committees:

Councilor Ferro reported the following out of the Finance Committee:

**Order No. 09-1002102 – Pursuant to Chapter 44, section 31D of the General Laws of the Commonwealth of Massachusetts, which authorizes the City to incur liability and make expenditures for any fiscal year in excess of appropriation for snow and ice removal, the City Council of the City of Marlborough, with the approval of the Mayor, approves expenditures in excess of available appropriation for snow and ice removal for Fiscal Year 2009. Recommendation of the Finance Committee is to approve 4-0. Chairman Ossing was absent.**

ORDERED: That the City investigate green-building laws that meet industry-accepted standards and alternative power sources, such as wind power. Further ordered that this matter be referred to the Building Inspector and Legislative & Legal Affairs Committee to review green-building laws existing in the Commonwealth and how Marlborough could benefit from such new local standards, refer to **LEGISLATIVE AND LEGAL AFFAIRS AND BUILDING INSPECTOR**; adopted.

ORDERED: That the appointment of William Brewin to Library Board of Trustees for a term which expires the 1<sup>st</sup> Monday in February 2012, **APPROVED**; adopted.

ORDERED: That the reappointment of John Peltier and Kevin Boyle as Fence Viewers for terms of one year expiring on the 1<sup>st</sup> Monday of February 2010, **APPROVED**; adopted.

ORDERED: That the reappointments of Lawrence Roy and Michelle Higgins to the Conservation Commission for terms to expire March 5, 2012, **APPROVED**; adopted.

**Councilor Clancy abstained**

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:40 p.m.